*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO. 16019 of 1996

AND

WRIT PETITION NO. 8319 OF 1997

-

% 10-11-2005

FGP Limited,

A Company incorporated under the Companies Act, 1956 having its registered; office at Mumbai (the Successor-in-interest in so far as the factory at Thimmapur, Mahaboob Nagar District of CEAT Limited) Thimmapur, Mahabob Nagar District, Andhra Pradesh rep.,by its General Manager (HR) Mr. V.Sundar Rao.

… Petitioner

Vs.

$ 1. The Presiding Officer, Labour Court-III, Chandravihar, M.J.Road, Hyderabad – 500 001 and another.

… Respondent

! Mr.C.R.Sridharan, Counsel for the Petitioner

^ Counsel for respondent: Counsel for the Respondent

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>Head Note

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AIR 1984 SC 186

[2] AIR 1975 SC 650

[3] AIR 1972 AP 134 FB

[4] AIR 1983 SC 43

[5] (1996) 11 SCC 680

[6] AIR 2001 SC 699

[7] AIR 1981 SC 588

[8] AIR 1978 SC 484

[9] AIR 1921 Privy Council 50

[10] AIR 1972 AP 134 (FB)

[11] (1988) 1 ALT 178

[12] AIR 1984 SC 153 (FB)

[13] 1993 (1) LLJ Page 626

[14] 1982(1) LLN 332

[15] 1991(1) LLJ 29

[16] 1994(1) LLJ 162

[17] (1996) 3 SCC 364

[18] AIR 1963 SC 439

[19] AIR 1964 SC 1272

[20] AIR 1964 SC 1458

[21] (1970) 1 LLJ 26

[22] (1995) 5 SCC 75

[23] 1994(4) SCC 422

[24] 1998(6) SCC 651

[25] AIR 1986 SC 2118

[26] 1993 (1) LLN: SC(1)

[27] 2000 LIC 3111

[28] 1973 SC 1183

[29] 2005 LAB.I.C.1073

[30] 1979 (39) F.L.R. 70 S.C.

[31] 1971 LAB.I.C. 788 Assam H.C.(DB)

[32] 1973(1) LLJ 278 SC para 44 & 46

[33] 1978 SCC (L&S) 465 para 17

[34] 1999 SCC (L&S) 302 para 18 (3)

[35] 1990 LLR AP 236 para 43

[36] AIR 1964 SC 506

[37] 2001 (5) SCC 433

[38] AIR 1971 SC 2414

[39] AIR 2001 SC 3645

[40] (1980) 4 SCC 443

[41] AIR 2001 SC 2270

[42] (2005)3 Supreme Court Cases 134

[43] (2005) 2 SCC 481

[44] 1997(1) LLJ 1212

[45] 2001 LLR 11

[46] 2000(2) LLN 402

[47] AIR 1982 Supreme Court 1552

[48]AIR 1984 Supreme Court 914

[49]AIR 1989 SC 149

[50] 1995 SCC (L&S) 1367

[51] 1996(3) ALD 383

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.16019 OF 1996

AND

WRIT PETITION NO.8319 OF 1997

COMMON ORDER:

W.P.No.16019 of 1996 is filed by M/s GHP Limited, against the award of the labour Court-III, Hyderabad in I.D.No.282 of 1993, (old I.D.No.289 of 1990), dated 23.03.1996, whereby the order of termination of the services of the 2nd respondent was set aside and he was directed to be reinstated with continuity of service and attendant benefits, but without back wages and on deferment of two increments as if not accrued.

To the extent, back wages were denied and punishment of deferment of two increments was imposed by the labour Court, the workman has challenged the award, in W.P.No.8319 of 1997.

As the award of the labour Court, in I.D.No.282 of 1993 dated 23.03.1996, is under challenge in both the writ petitions, they were heard together and are being disposed of by a common order. Parties shall, hereinafter, be referred to as they are arrayed in W.P.No.16019 of 1996.

Facts, to the extent necessary for this writ petition, are that the petitioner-company, with its registered office at Mumbai, was engaged in manufacture and sale of fiberglass and its products. It had a factory, at Thimmapur in Mahaboob Nagar District of Andhra Pradesh, which it had earlier taken over from CEAT Limited. The 2nd respondent was appointed as an operator in the petitioner's factory in 1981. The 2nd respondent, while working in the "C" shift on September 2nd 1988, was allegedly found sitting in the bushing control room at about 10.50 pm reading a magazine and when the shift incharge asked him to do the work of fibre forming, he is alleged to have abused the shift incharge calling him "saala and Maa-ka-louda", an abuse in Hindi. This incident is alleged to have taken place in the presence of supervisors. The 2nd respondent workman was issued a charge sheet on 3rd September 1988 and called upon to offer his explanation as to why disciplinary action should not be taken against him.

Again on September 6th, when he was in the "B" shift in the fibre forming section at about 3.30 pm, the 2nd respondent is alleged to have left his assigned place of work and to have rushed towards one Mr. Mohan, a Senior Executive, who was just about to enter his cabin, and to have addressed him in a threatening manner in Hindi, thus:-

"You people were responsible for my transfer from the mechanical Department to the production Department and from the production Department to the fibre Forming. I am now facing a lot of troubles and I have also been issued with a charge sheet. All this has happened because of you people. There is no much time left now for me to leave this place. When I will be removed from here them my wages will stop which will cause me trouble. When my wages will stop then I will face difficulties and then you people will have to send the money to my home, otherwise you and your family will have lot of troubles".

On being questioned as to what he meant by the threat, the 2nd respondent is alleged to have replied that nothing could be specifically stated at that moment as to what he could do but it had to be seen. The 2nd respondent is alleged to have gesticulated in a threatening manner towards Mr. Mohan and to have walked away.

The 2nd respondent was issued charge sheet for this alleged incident, on September 8th 1988, and was placed under suspension pending enquiry.

The departmental enquiry was conducted on 14th September 1988 and since the 2nd respondent did not attend, the enquiry was adjourned to 28th September 1988, on which date the 2nd respondent is said to have attended the enquiry and to have informed the Enquiry Officer that he would not seek the assistance of any co-employee but would defend himself. The Enquiry Officer is said to have read out the charge sheet and to have explained its contents to the 2nd respondent who is said to have denied the allegations as false and that he did not commit any misconduct. The 2nd respondent refused to cross examine the management witnesses, who were examined on 28th September 1988, on the plea that full subsistence allowance was not paid to him. The 2nd respondent was set *ex parte,* the enquiry proceeded with and thereafter concluded on 10th October 1988 when three more witnesses were examined in support of the charges. The Enquiry Officer submitted his report on 25th October 1988 holding the 2nd respondent guilty of the charges alleged against him.

With reference to the 2nd charge sheet dated 8th September 1988, a copy sent to the 2nd respondent, by registered post acknowledgment due, is said to have been returned unserved with the endorsement that he was absent. However the charge sheet was later served, on the 2nd respondent, on 20th September 1988 when he attended the factory. Since there was no explanation forthcoming from the 2nd respondent, it was decided to conduct an enquiry. The 2nd respondent is said to have attended the enquiry on 8th November 1988 and to have submitted a letter, to the enquiry Officer, addressed to the Asst. Manager (Admn. and Personnel), purported to be his explanation to the charge sheet dated 3rd September 1988. Since the explanation related to the other charge sheet and had no connection with the subject matter of enquiry, the Enquiry Officer proceeded to conduct the enquiry in respect of the subsequent charge sheet dated 8th September 1988. The Enquiry Officer is said to have called upon the 2nd respondent to make a statement regarding the 2nd charge sheet, to which he is said to have made a statement that it is only if a copy of the complaint was furnished would he tender his explanation. The enquiry was proceeded with, without a copy of the complaint being given to the 2nd

respondent, in view of the assertion by the management that the copy of the complaint would be furnished as and when witnesses were examined and not earlier. When asked to cross examine, the 2nd respondent is said to have sought extension of time and subsequently, on 15th November 1988, to have cross examined the witnesses. Thereafter the evidence on behalf of the management was closed. The 2nd respondent did not choose to adduce evidence, either oral or documentary, in his defence and merely stated that the written explanation submitted by him on 15th November 1988 may be considered. The Enquiry Officer submitted his report holding the 2nd respondent guilty of misconduct.

Having regard to the findings of the Enquiry Officer and the seriousness of the charges held proved, notice dated 3rd December 1988 was issued to the 2nd respondent calling upon him to show cause as to why he should not be dismissed from service. The 2nd respondent submitted his explanation thereto, vide his letter dated 16th December 1988. After considering his explanation and on holding that there was no mitigating or extenuating circumstances to take a lenient view in the matter and also having regard to his past record, the punishment of dismissal from service was imposed on the 2nd respondent on 20th December 1988.

Reference is made, in the affidavit filed in support of the writ petition, to the past record of service of the 2nd respondent, who is said to have been warned six times for unauthorisedly leaving the work spot, reading magazines during working hours, habitual absenteeism etc and to have been advised to improve his attendance. It is stated that all these warnings had been given, after due enquiry into the case, that the 2nd respondent was punished with suspension for two days as he had been found guilty of being unauthorizedly absent from his work place, during working hours, on 17th February 1988, to have been orally warned for his rude behaviour on 12th April 1988 with one of the executives, to have been warned, vide letter dated 21.06.1988, for having been found sleeping on duty and to have again been warned and his wages deducted for refusing to do alternate jobs. It is contended that the previous record would disclose that there were no extenuating or mitigating circumstances to take a lenient view in the matter and that the order of dismissal imposed on the 2nd respondent was valid.

The 2nd respondent filed a petition, under Section 2-A (2) of the Industrial Disputes Act, 1947, before the labour Court on 12th September 1990. The petition was initially numbered as I.D.No.289 of 1990, and on the matter being transferred and posted before the Labour Court III, Hyderabad, it was renumbered as I.D.No.282 of 1993. The Labour Court III, by order dated 27th August 1994, upheld the validity of the domestic enquiry. The 2nd respondent workman filed I.A.No.219 of 1995 seeking review of the order dated 27th August 1994. In the petition, filed in I.A.No. 219 of 1995, the 2nd respondent sought for an opportunity to adduce evidence and submit arguments regarding the validity of the domestic enquiry. I.A.No.219 of 1995 was dismissed, by the Labour Court, by order dated 11th March 1995. The Petitioner management filed I.A.No.28 of 1995, seeking permission to adduce evidence regarding the past service record of the 2nd respondent workman. On the I.A. being allowed by the Labour Court, the petitioner examined one witness and marked 14 documents as exhibits. The Labour Court thereafter examined the matter under Section 11-A of the Industrial Disputes Act and passed the award dated 23rd March, 1996 which was published in G.O.Rt.No.1911 dated 4th April 1996.

This award is challenged, by the petitioner-employer as having been passed without application of mind. The findings of the labour Court, on the quantum of punishment and the reasons given for its substitution by a lesser punishment are contended to be perverse and liable to be set aside by this Court in certiorari proceedings.

Before the contentions raised in W.P.No. 16019 of 1996 are examined, it is necessary to consider the contentions raised in W.P.No.8319 of 1997 filed by the 2nd respondent workman.

The relief sought for in W.P.No.8319 of 1997 is to quash the order in I.A.No.219 of 1995 in I.D.No.282 of 1993 dated 11.03.1995 in not reviewing the order dated 27.08.1994 upholding the validity of the domestic enquiry and to hold that the award, in I.D.No.282 of 1993 dated 23.03.1996, insofar as back wages were denied and punishment of deferment of two increments was imposed, is arbitrary, unjust and in violation of Articles 14 and 16 of the Constitution of India.

In the affidavit, filed in support of W.P.No. 8319 of 1997, the 2nd respondent workman would state that the enquiry conducted against the workman was without affording him reasonable opportunity, in spite of his request for being supplied copies of certain documents neither the Enquiry Officer nor the petitioner had furnished copies thereof, that the workman was not paid the subsistence allowance to which he was entitled to from the date of his suspension on 03.09.1998, that the punishment imposed on him was only because he was an active union leader which was not to the liking of the petitioner, that the enquiry proceedings were conducted in violation of principles of natural justice, that no independent witness was examined in support of the charge and only the complainant was examined in this regard, that the 2nd respondent workman was issued show cause notice of removal dated 03.12.1988 without furnishing him a copy of the enquiry report and other relevant documents and though the workman had, vide letter dated 16.12.1988, requested the petitioner management to furnish him a copy of the enquiry report in order to enable him to submit his explanation, his request was not favourably considered prior to imposition of punishment.

It is stated that in I.D.No.282 of 1993 the workman had engaged a counsel to prosecute the case on his behalf. However due to the sudden demise of his wife the said Counsel could not attend the hearing and as a result the Labour Court, after hearing arguments of the Counsel for the management, passed the order upholding the validity of the domestic enquiry. It is stated that the 2nd respondent-workman, thereafter, engaged another Counsel and filed I.A.No.219 of 1995 seeking review of the order as there was a glaring mistake apparent on the face of the record as the Labour Court, by order dated 27.08.1994, had upheld the validity of the enquiry without perusing the documents on record, though the documents submitted by the workman formed part thereof. I.A. 219 of 1995 was dismissed by the Labour Court holding that it did not have the power to review the order. It is stated that Rule 30, of the A.P. Industrial Rules, empowers the Labour Court to review its orders, that the order of the Labour Court, in I.A.No.219 of 1995, was not challenged earlier as interlocutory orders of Labour Courts are, normally, not entertained by this Court and in such circumstances, the said order is now being challenged along with the award passed in I.D.No.282 of 1993 dated 11.03.1995.

It is contended that the Labour Court had erred in placing reliance on the past

record of service of the 2nd respondent-workman, which did not form part of the domestic enquiry, and had been placed before the Labour Court after the validity of domestic enquiry was upheld, that the findings of the Labour Court are contrary to the material evidence on record and that the order of the Labour Court in imposing punishment, of deferment of two annual increments and in denying back wages, was illegal.

AMENDMENT OF PLEADINGS/PRAYER IN WRIT PROCEEDINGS

During the course of final hearing of both the writ petitions and after Sri C.R. Sridharan, learned Counsel for the employer, had completed his submissions and had pointed out that the workman had not challenged the validity of the domestic enquiry even in the present Writ Petition, W.P.M.P.No. 27113 of 2005 in W.P.No.8317 of 1997 is filed by the 2nd respondent workman seeking amendment of the prayer to include a challenge to the order of the Labour Court dated 27.08.1994 upholding the validity of the domestic enquiry. The petitioner filed a counter affidavit opposing the request for amendment, contending that since arguments in the writ petition are almost complete, no permission ought to be granted at this stage to amend the prayer to include a challenge to the validity of the domestic enquiry.

Sri C.R.Sridharan, Learned Counsel for the petitioner, would rely on **Krishna Priya Ganguly Vs. University of Lucknow** in support of his submission that it is not open for the High Court, under Article 226 of the Constitution of India, to grant a relief beyond what has been sought for in the writ petition. Learned Counsel would refer to **Piare Lal Vs. Union of India,** and contend that a belated application for amendment ought not to be permitted in the absence of any specific explanation for the inordinate delay in seeking amendment of the relief sought for in the writ petition.

Sri V.Narasimha Goud, Learned Counsel for the workman, would submit that since there is a specific plea that the domestic enquiry was vitiated and that the workman, soon after the order dated 27.08.1994 whereby the Labour Court had upheld the validity of the domestic enquiry, had filed the petition in I.A.No.219 of 1995 seeking review of the said order, and since the order of the Labour Court, rejecting the 2nd respondent's request to review its order, upholding the validity of the domestic enquiry, is the subject matter of challenge in this writ petition, the amendment petition should be ordered permitting a challenge to the validity of the domestic enquiry also, since failure to seek this relief in the writ petition was purely

by oversight, and as no third party rights will be affected if the petition is allowed. Learned Counsel would rely on **Bhoganadham Seshaiah Vs. Budhi Veerabhadrayya**; **Harcharan Vs. State of Haryana C.S.Company Vs. Kerala State Electricity Board** and **Ragu Thilak.D.John Vs. S.Rayapan** in this regard.

Normally Courts insist on parties being confined to the specific written pleadings and do not permit them to deviate therefrom by way of modification or supplementation except through the well known process of formally applying for an amendment. (**S.S.Sarma Vs. Union of India**). Procedural laws are, however, intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings are meant to give each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take. It is always open for this Court to permit amendment of pleadings or the prayer sought for. (**M/s. Ganesh Trading Co., Vs. Moji Ram; Haricharan** (4 supra). As long as the amendment does not constitute addition of a new cause of action or a change in the cause of action as originally pleaded, the petition for amendment need not be rejected (**C.S.Company – 5 supra**). A belated request for amendment cannot , by itself, be a ground for refusal thereof. The power to allow amendment is wide and can be exercised at any stage of proceedings in the interest of justice. While amendment cannot be claimed as a matter of right and under all circumstances Courts, while deciding such prayers, should not adopt a hypertechnical approach. Liberal approach should be the general rule and technicalities of law should not be permitted to hamper Courts in the administration of justice between parties. Amendments are allowed to avoid uncalled for multiplicity of litigation. (**Ragu Thilak D.John – 6 supra**). While an amendment, where its effect is to take away from a person a legal right which has accrued to him by lapse of time, would not normally be permitted, yet there are cases where such considerations are outweighed by the special circumstances of the case. Whether there are any special circumstances or not is a question of fact which has to be decided on the material on record and keeping in view the circumstances of the case. (**Charandas Vs. Amir Khan; B.Seshaiah Vs. B.Veerabhadrayya**).

Now the judgments relied upon by Sri C.R.Sridharan, learned Counsel for the employer. In **Krishna Priya Ganguly** (1 supra) refusal to admit candidates, to post graduate degree courses in dental surgery, was the subject matter of challenge.

Upon laying down the criteria for admission to these post graduate courses, the Allahabad High Court, while observing that certain candidates were dedicated workers having acquired diploma and had proved to be an invaluable asset to the institution, directed that they be admitted into post graduate courses. It is in this context that the Supreme Court observed that there was no proper material for the conclusions which the High Court had arrived at, apart from the fact that admissions were not to be given by the High Court according to its own notions and since the prayer sought for in the writ petition was to direct the State or the College to consider the case of candidates for admission and the High Court had straight away issued a writ of mandamus directing the College to admit the candidates, it had thereby granted a relief which the respondents themselves had not and could not have prayed for.

In the present case the order of the Labour Court, dated 27.08.1994, upholding the validity of the domestic enquiry, was challenged by the workman before the Labour Court itself in I.A.No.219 of 1995 in I.D.No.292 of 1993. I.A.No.219 of 1995 was rejected by the Labour Court, by order dated 11.03.1995, holding that it did not have the power to review the order. This order of the Labour Court, in I.A.No.219 of 1995, is challenged in the present writ petition. Taking a hypertechnical view would require challenge in the writ petition to be restricted only to the order of the Labour Court dated 11.03.1995 refusing to review its earlier order dated 27.08.1994. The fact however remains that, in substance, it is the order of the Labour Court dated 27.08.1994, upholding the validity of the domestic enquiry, which is under challenge, albeit, indirectly. While it is true, as laid down in **Krishna Priya Ganguly** (1 supra), that this Court would, normally, not grant a relief which has not been prayed for, this Court can, if there are justifiable reasons to do so, mould the relief. A five judge bench of this Court in **Dronamraju Satyanarayana Vs. N.T.Rama Rao**) held that this Court could exercise its discretion and mould the relief to meet the situation more particularly in view of the comprehensive provisions of Article 226 of the Constitution of India which empowers the High Court to issue orders, “for any other purpose”, apart from writs for enforcement of the fundamental rights conferred under Part-III of the Constitution of India.

While this Court undoubtedly has the power, to mould the relief, even in the absence of a specific prayer in this regard, it is not necessary for it to do so as a

petition has now been filed seeking amendment of the prayer to include a challenge to the order of the Labour Court dated 27.08.1994 upholding the validity of the domestic enquiry.

In **Piare Lal** (2 supra) the writ petition was filed before the Punjab and Haryana High Court in 1965. During the pendency of the writ petitions, the Government had issued two orders on 28.10.1966. No amendment was sought before the Punjab and Haryana High Court to include a challenge to the validity of the aforesaid two orders. Even after the writ petitions came to be dismissed by the High Court on 09.08.1967 and even during the pendency of the appeals before the Supreme Court for seven long years, no application for amendment of the prayer was made. It was only after the hearing of the Appeals were concluded and when it was pointed out by the Supreme Court that the entire basis of the Appeals was knocked out by the two orders dated 28.10.1966 and no relief could be granted unless these two orders were impugned, that the appellant had asked for time to move an application for amendment of the petition so as to include a challenge to the validity of these two orders. It is in this context that the Supreme Court held, that the appellant could not seek amendment of the petition to include a challenge to the orders dated 28.10.1966 more than eight years after they were made, that it was not possible to believe the appellant was not aware of the making of these two orders and that he came to know of them for the first time when the affidavit dated 2nd January, 1975 was filed on behalf of the State Government. The Supreme Court observed that the appellant could have amended the petition earlier, at any rate during the long period of seven years when the appeal was pending before the Supreme Court, but the appellant was either lax or negligent and that after a lapse of such a long time and particularly after the hearing of the appeal was concluded, the appellant could not be allowed to amend the petition.

In the present case, the order of the Labour Court dated 27.08.1994, upholding the validity of the domestic enquiry is, indirectly, under challenge in the order of the Labour Court in I.A.No.219 of 1995 dated 19.03.1995, refusing to review its earlier order dated 27.08.1994. In the affidavit, filed in support of the petition seeking amendment, it is stated that by mistake the earlier order of the Labour Court dated 27.08.1994 was not challenged. I find no reason to disbelieve the averment of the 2nd respondent workman that failure to challenge the said order dated

27.08.1994 was by oversight as there is a challenge to the subsequent order of the Labour Court in I.A.No.219 of 1995 dated 19.03.1995 refusing to review the earlier order dated 27.08.1994. I am not inclined to reject the application seeking amendment on hypertechnicalities, as no legal rights, accrued to the employer, would be adversely affected, if the amendment is ordered. Delay by itself, without anything more, would not disentitle an amendment to the prayer, when the cause of action is not subjected to alteration, and the grounds raised in justification of the prayer, sought to be included by way of an amendment, have already been urged in the claim statement before the Tribunal and in the affidavit, filed in support of the writ petition, before this Court. The amendment sought for in W.P.M.P.No.27113 of 2005 is therefore allowed and the prayer in the W.P.No. 8319 of 1997 stands amended accordingly.

ORDER OF THE TRIBUNAL UPHOLDING THE VALIDITY OF DOMESTIC ENQUIRY: SCOPE OF JUDICIAL REVIEW.

Sri V.Narasimha Goud, Learned Counsel for the 2nd respondent, would rely on **D.P. Maheswari Vs. Delhi Admn,** and submit that since the workman had challenged the validity of the domestic enquiry, albeit in the review proceedings in I.A.No.219 of 1995 before the Labour Court, and since his failure to earlier contest the validity of the domestic enquiry was on the peculiar circumstances of the demise of his Counsel's wife and consequent failure on his Counsel to attend the Labour Court, it is just and necessary that this Court along with the award, also examines the validity of the domestic enquiry. Learned Counsel would submit that since there is a specific plea, in the affidavit filed in support of the writ petition, challenging the validity of the domestic enquiry, this Court was not precluded from examining as to whether, or not, the Labour Court was justified in upholding the validity of the domestic enquiry, when it is not in dispute that the workman was not furnished a copy of the enquiry report.

Sri C.R. Sridharan, learned Counsel for the petitioner-employer, would submit that the workman was not disabled from approaching this Court when the Labour Court had passed the order upholding the domestic enquiry and had rejected the workman's plea for review of the said order. He would rely on **Management of Glaxo India Ltd, Madras Vs. Presiding Officer, Labour Court, Guntur** and **Nellimarla Jute Mills Company Ltd Vs. Labour Court, Guntur,** in support of his

submission that the High Court, under Article 226 of the Constitution of India, could examine and, if need be, interfere with the findings of the Labour Court/Tribunals, on the preliminary issue upholding the validity of the domestic enquiry.

In **D.P. Maheswari** (12 supra), the Supreme Court held that High Courts should not stop proceedings before the Tribunal so that a preliminary issue may be decided by them and that the jurisdiction of the High Court, under Article 226 of the Constitution of India, should not be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to do so, as interlocutory orders could always be challenged along with the award passed by the Labour Court. While the caution administered by the Supreme Court in **D.P.Maheswari** (12 supra) is that the High Court, under Article 226 of the Constitution of India, ought not to pass orders interdicting proceedings before Labour Courts/Industrial Tribunals, it cannot be said that the workman, in the present case, was precluded from challenging the interlocutory order dated 27.08.1994 of the Tribunal, in proceedings under Article 226 of the Constitution of India. (**Glaxo Laboratories** (13 supra) and **Nellimerla Jute Mills** (14 supra)). This question need not, however, detain us since it is not in dispute that after an award is passed, by the Labour Court/Industrial Tribunal, either party to the dispute is not only entitled to challenge the award but also the interlocutory orders passed during the pendency of the industrial dispute. Challenge, in the present case, to the interlocutory order of the Labour Court, upholding the validity of the domestic enquiry, cannot be rejected as a workman is always entitled to challenge such an order, on a preliminary issue, along with the award passed by the Labour Court.

The scope of judicial review, under Article 226 of the Constitution of India, of the order of the Labour Court upholding the validity of the domestic enquiry, is no doubt limited. The jurisdiction exercised by the High Court is not appellate, but is supervisory. It is only if the Labour Court has failed to take into consideration relevant material or has considered irrelevant material or its findings are either perverse or based on no evidence, or its order is contrary to law, would interference be called for. Industrial Tribunals/Labour Courts, while adjudicating the preliminary issue regarding the validity of the domestic enquiry, are required to examine whether the domestic enquiry was conducted in accordance with principles of natural justice and the applicable rules, regulations or standing orders. It is not for the Labour Court, while adjudicating this preliminary issue, to go into the merits of the Industrial

dispute or to exercise its powers under Section 11-A of the Industrial Disputes Act. In case the domestic enquiry is held in accordance with principles of natural justice and the applicable rules, regulations and standing orders, the validity of the domestic enquiry is to be upheld and thereafter the matter is to be examined under Section 11-A of the Industrial Disputes Act. If, however, the domestic enquiry has not been held in accordance with principles of natural justice, or the rules, regulations or certified standing orders of the company, and prejudice has been caused thereby to the workman, the domestic enquiry is to be declared as vitiated and thereafter an opportunity, if requested for, has to be provided to the employer to adduce evidence justifying the charges framed and the penalty imposed on the workman.

ENQUIRY REPORT NOT FURNISHED PRIOR TO IMPOSITION OF PUNISHMENT: SCOPE OF ENQUIRY BY THE TRIBUNAL WHILE ADJUDICATING THE PRELIMINARY ISSUE REGARDING VALIDITY OF THE DOMESTIC ENQUIRY.

Sri V.Narasimha Gowd, Learned Counsel for the 2nd respondent, would refer to the specific plea, in the application (claim statement) filed by the workman in I.D.No.289 of 1990, that along with the show cause notice, the findings of the Enquiry Officer, and the depositions in the domestic enquiry, were not furnished to the workman. In ground No.1, of the claim statement, it is specifically pleaded that the findings of the Enquiry Officer was not supplied, the enquiry was in violation of principles of natural justice and the punishment based on such defective enquiry is illegal. Learned Counsel would also refer to the certified standing orders of the petitioner company, more particularly clause 25.2 and 25.4.b which relates to supply of a copy of the Enquiry Report and payment of subsistence allowance.

Clause 25.2 and Clause 25.4.b of the certified standing orders of the petitioner Company read as under:

2. A workman against whom an enquiry has to be held should be given a charge

sheet clearly setting forth the circumstances appearing against him. He shall also be informed the date, time, place and the name of the person who shall hold the enquiry into the charges leveled against him. He shall be given an opportunity to answer the charges during the enquiry and be permitted to secure the assistance of a co-workman. No postponement of proceedings may be given at any stage of enquiry on the ground merely of non-availability of the person whose assistance is sought except for reasons to be recorded in writing by the person holding the enquiry. The workman shall be permitted to produce witnesses for his defence and cross examine any witnesses on whose evidence the charge rests. The evidence led on either side shall be recorded. **A copy of the record of enquiry may be given if asked for when the enquiry is over.**

25.4.b A workman who is placed under suspension under clause (a) shall, during the period of suspension be paid a subsistence allowance at the following rates namely:-

Where the disciplinary proceedings contemplated or pending is departmental, the subsistence allowance shall, for the first ninety days from the date of suspension equal to one half of the basic wages, dearness allowance and other compensatory allowances to which the workman would have been entitled, if he were on leave with wage. If the departmental proceedings gets prolonged and the workman continues to be under suspension for a period exceeding ninety days, he will be paid equal to three fourths of such basic wages, dearness allowances, and other compensatory allowances. Provided that where such proceedings is prolonged beyond a period of ninety days for reasons directly attributable to the workman, the subsistence allowances shall for the period exceeding ninety days, be reduced to one-fourth of such basic wages, dearness allowances and other compensatory allowances.

Sri C.R. Sridharan, learned Counsel for the petitioner-employer, would submit that the punishment imposed on the 2nd respondent workman was on 20.12.1988 much prior to the judgment in **Union of India Vs. Mohd. Ramzan Khan** wherein the Supreme Court, while holding that natural justice would entitle the delinquent to a copy of the Enquiry report, held that the law laid down in the said judgment had prospective operation and no punishment imposed would be open to challenge on this ground. Learned Counsel would submit that since the judgment in **Ramzan Khan** (15 supra) was pronounced on 20.11.1990, all cases wherein punishment was imposed prior to 20.11.1990 could not be reopened on the ground that a copy of the enquiry report was not furnished to the delinquent. Learned Counsel would submit that the judgment in **Ramzan khan** (15 supra) was approved in **Management Director, ECIL, Hyderabad Vs. B. Karunakar**, wherein it was held that it is only when the workman has proved that prejudice was caused to him, on account of the copy of the enquiry report not being furnished, would interference be called for. Learned Counsel would refer to **State Bank of Patiala Vs. S.K.Sharma**

in support of his submission that application of rules of natural, including furnishing a copy of the enquiry report, should be examined on the touchstone of prejudice. Learned Counsel would contend that, in the absence of a plea both before the Labour Court and this Court, that the workman had been prejudiced, on not being furnished a copy of the enquiry report, it must be deemed that the workman has not suffered any prejudice in this regard.

I n **Mohd. Ramzan Khan** (15 supra), the question which arose for consideration before the Supreme Court was as to whether amendment of Article 311(2), by the forty-second amendment of the Constitution, doing away with the opportunity of showing cause against the proposed punishment, had resulted in the delinquent losing his right to be furnished a copy of the enquiry report. The Supreme Court held that deletion of the second opportunity, from the scheme of Article 311(2) of the Constitution, had nothing to do with providing of a copy of the enquiry report to the delinquent in the matter of making his representation and the delinquent was still entitled to represent against the conclusion of the Inquiry Officer in holding that the charges or some of the charges were established and the delinquent was guilty of such charges. The Supreme Court held that furnishing a copy of the enquiry report became necessary to enable the delinquent to meet the recommendations of the Enquiry Officer in the matter of imposition of punishment. While holding that application of rules of natural justice could be excluded by law and that Article 311(2) did not exclude such rules, the Supreme Court also held that supply of a copy of the inquiry report along with the recommendations, if any, in the matter of proposed punishment to be inflicted would be **within the rules of natural justice** (emphasis supplied) and that the delinquent would, therefore, be entitled to being supplied a copy thereof. The Apex Court took note of several decisions of different High Courts and the Supreme Court to the contrary and since in **Mohd.Ramzan Khan (**15 supra**)** a different view was being taken, held that the law laid down would have prospective application and no punishment imposed would be open to challenge on this ground.

It is not in dispute that the punishment imposed on the 2nd respondent workman, on 20.12.1988, was prior to the judgment in **Mohd.Ramzan Khan** (15 supra) delivered on 20.11.1990. Unlike in **Mohd.Ramzan Khan** (15 supra) where the requirement of furnishing a copy of the inquiry report was held to be part of the rules of natural justice, in the present case, such a requirement is prescribed under

the certified standing orders of the company. Clause 25.2 of the certified standing orders requires a copy of the inquiry report to be given to the delinquent employee, if asked for. Since the 2nd respondent workman had specifically asked for such a copy of the inquiry report the petitioner was required, under the certified standing orders, to furnish a copy there of. It is settled law that the certified standing orders of the company bind both the employer and the workmen. The certified standing orders are conditions of service framed by the employer which are approved/certified by the prescribed statutory authority, after hearing the workmen concerned. These Standing Orders are binding upon both the employer and the employees and constitute the conditions of service of the employees. **(Bagalkot Cement Co. Ltd. V. R.K. Pathan ; Buckingham and Carnatic Co. Ltd v. Venkataiah; Workers of Dewan Tea Estate v. Management; Workman v. Buckingham and Carnatic Mils** and **Rajastan SRTC v. Krishna Kant).**

The employer was obligated, in view of Clause 25.2 of the certified standing orders, to furnish a copy of the inquiry report. Failure to furnish a copy of the inquiry report, in the present case, is not merely in violation of principles of natural justice but also in violation of the certified standing orders, and as such reliance on **Mohd.Ramzan Khan** (15 supra) is misplaced. Accepting the submission of Sri C.R. Sridharan, learned Counsel for the petitioner, would mean that even in cases where the Employer has acted contrary to and in flagrant violation of the binding certified Standing orders, the judgment in **Mohd.Ramzan Khan** (15 supra) would enure to its benefit and require such violation to be ignored. The judgment of the Supreme Court in **Mohd.Ramzan Khan** (15 supra), giving prospective operation to the requirement of furnishing a copy of the inquiry report, has no application to the facts of the present case.

The question which however remains to be considered is whether failure to furnish a copy of the inquiry report could be said to have caused prejudice to the workman. It is in this context that the judgments of the Supreme Court, in **Karunakar** (16 supra) and **State Bank of Patiala** (17 supra) are required to be examined. The Constitution Bench of the Supreme Court in **Karunakar** (16 supra) approved the law laid down in **Mohd.Ramzan Khan** (15 supra) and held that furnishing a copy of the inquiry report to the delinquent employee, before imposition of punishment, was part of the rules of natural justice. On the consequences of failure to furnish a copy of the inquiry report and its effect on the order of punishment, the Supreme Court held thus:

"Hence in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Courts/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid resorting to shortcuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would has made a difference to the result in the case that it should set aside the order of punishment……."

In **Krishanlal Vs. State of J&K**, it was contended by the appellant that the decision in **Karunakar** (16 supra) would not apply as the requirement to serve the copy of the proceedings of the enquiry cannot be said to be part of natural justice, which was the view in **Mohd.Ramzan khan** (15 supra) and **Karunakar** (16 supra), and this requirement had its origin to a statutory provision i.e., Section 17(5) of the J&K (Government servants) Prevention of Corruption Act 1962. The Supreme Court, on taking note of the fact that the appellant had asked for a copy of the proceedings despite which it was not made available, held that the order of dismissal was invalid in law, and following the judgment in **Karunakar** (16 supra) held thus:

"According to us, therefore, the legal and proper order to be passed in the present case also, despite a mandatory provision having been violated, is to require the employer to furnish a copy of the proceedings and to call upon the High Court to decide thereafter as to whether non-furnishing of the copy prejudiced the appellant/petitioner and the same has made difference to the ultimate finding and punishment given. If this question would be answered in affirmative, the High Court would set aside the dismissal order by granting such consequential reliefs as deemed just and proper."

The order of termination cannot automatically be set aside on the ground of failure to furnish a copy of the inquiry report and the matter has to be examined from the standpoint of prejudice. The law laid down by the Supreme Court in **Karunakar** (16 supra) and **Krishan Lal** (23 supra) requires the Court/Tribunal to give the employee an opportunity to show cause as to how he was prejudiced because of non-supply of the report and if, after hearing the parties, the Labour Court comes to

the conclusion that non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Labour Court is not entitled to interfere with the order of punishment. Both **Karunakar** (16 supra) and **Krishan Lal** (23 supra) mandate the Labour Court to give the employee an opportunity to show as to how he was prejudiced because of non-supply of a copy of the inquiry report. Admittedly, in the present case, no such opportunity has been provided by the Labour Court, to the workman, while examining the validity of the domestic inquiry.

Sri C.R. Sridharan, learned Counsel for the petitioner employer, would place reliance on **State Bank of Patiala** (17 supra), and submit that such an opportunity was required to be provided by the Labour Court only if the 2nd respondent workman had pleaded prejudice and since no such plea has been taken by the workman, in his claim statement filed before the Tribunal, the question of providing such an opportunity does not arise. In **State Bank of Patiala** (17 supra), the statutory regulations required the delinquent employee to be supplied with copies of statements of witnesses, if any, recorded earlier, not later than three days before the commencement of examination of the witnesses by the inquiring authority. This statutory requirement was violated and the employee was merely given an opportunity to peruse the document and take notes therefrom. The Supreme Court held that the test in such cases would be one of prejudice. Regulations, which are of a substantial nature, have to be complied with and in case of such provisions the theory of substantial compliance would not be available. Even among procedural provisions, there may be some provisions of fundamental nature, which are required to be complied with and in which case the theory of substantial compliance may not be available. In respect of procedural provisions, other than of a fundamental nature, the theory of substantial compliance would be available and, in such cases, complaints had to be judged on the touchstone of prejudice. The Supreme Court emphasized that the test in such cases was whether "all things taken together whether the delinquent officer/employee had or did not have a fair hearing". The Supreme Court referred to **Karunakar** (16 supra) and held:

"It would not be correct in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in **B. Karunakar** should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on

the touchstone of prejudice as aforesaid."

As noted earlier, **Karunakar** (16 supra) required an opportunity to be provided to the delinquent employee of showing as to how he was prejudiced by reason of non-furnishing a copy of the enquiry report. It was therefore incumbent on the Labour Court to provide such an opportunity to the workman, as mandated by **Karunakar** (16 supra) and **Krishan Lal** (23 supra). The dicta in **Karunakar** (16 supra) and **Krishan Lal** (23 supra) is clear and categorical in that the labour Court is mandated to give such an opportunity to the delinquent workman. This principle is reiterated in **State Bank of Patiala** (17 supra) wherein it was held that the approach and test adopted in **Karunakar** (16 supra) should govern all cases where the complaint is one of not affording a proper hearing or of violation of a procedural rule or requirement governing the enquiry. Failure to plead prejudice, in the application filed by the workmen under Section 2-A (2) of the Industrial Disputes Act, is therefore of no consequence as the labour Court is mandated by law, as laid down in the aforementioned judgment of the Supreme Court, to provide such an opportunity.

Even otherwise, in his application, the workman had pleaded, in ground No.1, that along with the show cause notice a copy of the findings of the inquiry officer and the depositions made in the domestic enquiry were not furnished to him. In his explanation, to the show cause notice issued by the petitioner dated 03.12.1988, the workman had specifically stated that not being furnished the findings of the inquiry officer along with the showcause notice had resulted in his not being able to submit his explanation to the showcause notice. The employer was requested to furnish a copy of the inquiry report to enable him to submit an exhaustive reply. One of the principles of natural justice is that a person against whom action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where a charge-sheet is issued and the documents which are proposed to be utilised against that person form the basis of the charge-sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. **(State of U.P. v. Shatrughan Lal).** While the word "prejudice" may not have been used, the aforesaid letter of the workman, submitted in reply to the show cause notice, in effect, speaks of prejudice inasmuch as not being furnished the enquiry report is contended as having resulted in his not having been able to submit his

explanation exhaustively to the show cause notice.

The Labour Court, in accordance with the law laid down in **Karunakar** (16 supra) and **Krishan Lal** (23 supra), ought to have give such an opportunity to the delinquent workman and its failure to do so cannot be justified on the hypertechnical plea that the workman had not pleaded prejudice in the application filed by him under Section 2-A(2) of the Industrial Disputes Act. Needless to state that providing such an opportunity would have only enabled the workman to show as to how prejudice was caused and it was thereafter for the labour Court to decide whether the evidence adduced by the workman, on the aspect of prejudice, would justify upholding the validity domestic enquiry.

IMPORTANCE OF PLEADINGS IN INDUSTRIAL ADJUDICATION.

Sri V.Narasimha Goud, learned Counsel for the workman, would place reliance on **Kashinath Dikshita Vs. Union of India**; **State Bank of India Vs. D.C.Agarwal**; and **Shatrughanlal** (24 supra), in support of his submission that failure to furnish documents relied upon in the domestic enquiry would result in violation of the rules of natural justice. Learned Counsel would refer to **Jagadamba Prasad Shukla Vs. State of UP** and **Ghanshyam Das Shrivastava Vs. State of M.P,** to contend that an enquiry, conducted without payment of subsistence allowance to the workman, would stand vitiated. Learned Counsel would submit that as the material on record before the labour Court would disclose failure of the employer to furnish a copy of the enquiry report and other documents relied upon and non-payment of the subsistence allowance to the extent the workman was entitled to, the labour Court ought to have considered the same and ought not to have upheld the validity of the domestic enquiry. He would rely on **B. Viswanatha Rao Vs. Management of Canara Bank, Bangalore** wherein the Karnataka High Court, on examining the material on record, held that the domestic enquiry was vitiated. Learned Counsel would urge this Court also to examine the material on record before the Labour Court and adjudicate the validity of the domestic enquiry, which the Labour Court had erroneously held to be vitiated.

With regards non payment of full subsistence allowance and non-furnishing a copy of the complaint based on which the charge sheet was issued, Sri C.R. Sridharan, learned Counsel for the Employer, would submit that these questions were neither urged nor agitated before the labour Court and there is not even a

whisper in this regard in the claim statement, (application under Section 2-A(2)), filed by the workman. He would submit that since the workman had not chosen to raise these issues earlier, when the labour Court was examining the validity of the domestic enquiry, it was not open for the workman to now raise them for the first time before this Court. According to the Learned Counsel, unless the contention raised is one which was earlier urged before the labour Court and which the labour Court had decided one way or the other, such contentions ought not to be entertained in certiorari proceedings under Article 226 of the Constitution of India.

While Sri V.Narasimha Goud, learned Counsel for the workman would contend before this Court that failure to furnish documents, relied upon in the domestic enquiry, and failure to pay subsistence allowance in full, would vitiate the domestic enquiry, it cannot be lost sight of that, unlike failure to supply a copy of the Enquiry report which was specifically pleaded, there is no plea in this regard before the labour Court. It is for the first time before this Court that these questions have been raised.

In **Shankar Chakarvarti Vs. Britannia Biscuit Co. Ltd** the Supreme Court held

"While the labour Court/Tribunals may not be hide bound by the rules prescribed in the Evidence Act it is nonetheless a quasi-judicial Tribunal proceeding to adjudicate upon a lis between the parties arrayed before it and must decide the matter on the evidence produced by the parties before it, it would not be open to it to decide the lis on any extraneous considerations. The contention to substantiate which evidence is necessary has to be pleaded and if there is no pleading raising a contention there is no question of substantiating such a non-existing contention by evidence and that it is well settled that allegations which are not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained, it would tantamount to granting an unfair advantage to the other party. While pleadings before Tribunals are not to be read strictly, but it is equally true, the pleadings must be such as to give sufficient notice to the other party of the case it is called upon to meet. The rules of fair play demand where a party seeks to establish a contention which is to be proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading, there is no question of proving something, which is not pleaded."

Following **Shankar Chakravarti** (30 supra), this Court in **Management of Glaxo India Ltd** (13 supra) held thus:

"……The above two decisions categorically held that "the law is well settled that no amount of evidence can be looked upon as a plea which was never put forward" and "it is well settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained it would tantamount to granting an unfair advantage to the first mentioned party".

It is well settled that questions of fact not raised before labour Courts/Tribunals will not, normally, be considered on merits by this Court in certiorari proceedings under Article 226 of the Constitution of India. Unless the point in issue has been taken before the labour Court and the question was decided one way or the other, such a plea would not, normally, be entertained in proceedings under Article 226 of the Constitution of India. (**The Management of River Steam Navigation Company Ltd., Vs. Workman**).

Unlike in situations where the Labour Court is mandated by law, as laid down in **Karunakar** (16 supra) and **Krishan Lal** (23 supra), to give an opportunity to the workman to show as to how prejudice was caused to him on account of failure to supply a copy of the inquiry report, the question with regards failure to furnish copies of documents and non-payment of subsistence allowance in full, are matters which the labour Court was required to examine only if a specific plea had been raised in this regard by the workman concerned. As held in **Shankar Chakravarti** (30 supra), the question of substantiating a non-existing contention by evidence does not arise and since these pleas have not been taken before the labour Court, the contention that the Tribunal should have, on its own accord, examined these questions, from the material on record, cannot be accepted.

PAST CONDUCT/SERVICE RECORD OF A WORKMAN: SCOPE OF EXAMINATION UNDER SECTION 11-A OF THE INDUSTRIAL DISPUTES ACT

Sri C.R. Sridharan, learned Counsel for the petitioner would submit that even in cases where the domestic enquiry has been upheld, in view of the proviso to Section 11-A of the Industrial Disputes Act, it is always open to the employer to let in evidence with regard to the past conduct of an employee. Learned Counsel would rely on **The Workman of M/s. Firestone Tyre & Rubber Co. of India (Pvt) Ltd Vs. The Management** and **I.T.C.Ltd., Monghyr, Bihar Vs. Presiding Officer, Labour Court, Patna**.

Sri V. Narasimha Goud, learned Counsel for the workman, would rely on

Neetakaplish Vs. P.O. Labour Court and **AV Swamy Vs. IT Warangal** in support of his submission that unless the past record of service of a workman was part of the domestic enquiry it would not constitute material on record under Section 11-A of the Industrial Disputes Act, and could not be examined by the labour Court under Section 11-A after the validity of the domestic enquiry is upheld. Learned Counsel would place reliance on **The State of Mysore Vs. K.Manche Gowda**, in support of his submission that unless the past conduct had been specifically referred to in the show cause notice, proposing to impose punishment on the workman, the past conduct could not be taken into consideration while imposing punishment, since the workman would be denied an opportunity of submitting his explanation thereto.

I n **Fire stone** (32 supra), the Supreme Court held that the expression "material on record", occurring in the proviso to Section 11-A, cannot be confined only to the materials which were available in the domestic enquiry and on the other hand must refer to the material on record before the Tribunal. It was held that the expression took in (1) the evidence let in by the management at the enquiry and the proceedings of the enquiry, or (2) the aforesaid evidence and in addition any further evidence led before the Tribunal, or (3) evidence placed before the Tribunal for the first time in support of the action taken by an employer as well as the evidence adduced by the workman contra. It is on the basis of these materials that the Tribunal is obligated to consider whether the misconduct is proved. In **I.T.C. Ltd** (33 supra) the Supreme Court examined the service record of the employee and held that it was not a fit case where the order of reinstatement awarded by the tribunal could be upheld and in lieu of reinstatement directed payment of Rs.30,000/- as compensation to the workman.

In **Neetakaplish** (34 supra) the Supreme Court held that it was open to the Tribunal to deal with, in the first instance, as a preliminary issue, the validity of the domestic enquiry. If the finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the Management. If the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra. In **A.V.Swamy** (35 supra) this Court held that the past record of service of a workman is not material on record as visualized in the proviso to Section 11-A of the Industrial Disputes Act. In **Manche Gowda** (36 supra) the Supreme Court held that the order of punishment, imposed on

the basis of the previous record of service of which the workman was not informed of in the show cause notice proposing punishment, was illegal.

In **Karnataka State Road Transport Corporation Vs. Lakshmidevamma** the Supreme Court held that no fetters can be placed on the powers of the Tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if, on the facts and circumstances of the case, it is deemed just and necessary, in the interest of justice.

In the present case, the labour Court has allowed the I.A., filed by the petitioner seeking permission to let in evidence regarding the past service record of the workman, which the Supreme Court in **Lakshmidevamma** (37 supra) has held was within its powers. Since the discretion exercised by the Labour Court cannot be said to be perverse, arbitrary or without jurisdiction, no interference is called for by this Court, in certiorari proceedings, under Article 226 of the Constitution of India. This question, however, does not call for any further examination as the labour Court, pursuant to the order of this Court, is now required again to decide the validity of the domestic enquiry on the touchstone of prejudice caused to the workman on account of the employer not supplying him a copy of the enquiry report. It is only after the issue of the validity of the domestic enquiry is adjudicated by the labour Court and if the validity of domestic enquiry is upheld would the question of the labour Court permitting the employer to adduce evidence, in relation to the previous record of service of the workman, arise for consideration. If, on the other hand, the labour Court holds the domestic enquiry to be vitiated, and if the employer is permitted to adduce evidence afresh, such evidence can include evidence relating to the previous record of service of the workman concerned.

LOSS OF CONFIDENCE:

Sri C.R. Sridharan, learned Counsel for the petitioner, would submit that this Court could mould the relief and instead of reinstatement grant compensation, when the workman has lost the confidence of the employer.

When an employer loses confidence in his employee, particularly in respect of a person who is discharging an office of trust and confidence, there would be no justification in directing reinstatement and it would also be idle to ask him to employ such a person in another job. In lieu of reinstatement, the employer could be

required to pay a lumpsum amount to the employee as compensation. (**Francis Klien & Co. Vs. Workman**). To invoke the principle of "loss of confidence" the employer must plead and prove that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he has committed acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer and would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on the ground of loss of confidence. Loss of confidence cannot be subjective. Objective facts, which would lead to a definite inference of apprehension in the mind of the management regarding trustworthiness or reliability of the employee, must be alleged and proved. (**Kanhaiyalal Agrawal Vs. Factory Manager, Gwalior Sugar Co. Ltd**). In the present case, none of these three conditions have been pleaded or proved before the labour Court. This Court, in certiorari proceedings, would not, normally, examine issues which have not been urged, argued and established before Industrial Tribunals/Labour Courts. The plea of loss of confidence, taken for the first time before this Court, has therefore to be rejected.

COMPENSATION IN LIEU OF REINSTATEMENT:

Sri C.R. Sridharan, learned Counsel for the petitioner, would submit that, since the petitioner company has been suffering huge financial losses, resulting in the unit being transferred, the relief of reinstatement should be denied to the workman. In support of his submission, that in exceptional circumstances which make it impossible or wholly inequitable, the plea of the employee/workman seeking reinstatement with full back wages should be rejected, learned Counsel would rely on **Surendra Kumar Verma Vs. Central Government Industrial Tribunal-cum-Labour Court, New Delhi**. Learned Counsel would submit that while Section 17-B of the Industrial Disputes Act, requires the employer, during pendency of proceedings before this Court, to pay wages last drawn, in compliance with the interim orders of this Court the workman was paid current wages upto November 2004. Learned Counsel would rely on **Regional Authority, Dena Bank Vs. Ghanshyam** wherein it was held that it would be in the interest of justice to ensure, if the facts of the case so justify, that payment of any amount, over and above the amount payable under Section 17-B, could be recovered from the employee.

Learned Counsel would submit that the compensation already paid to the workman of current wages, in excess of the amount actually payable under Section 17-B, upto November, 2004 is adequate compensation in lieu of reinstatement.

In **Surendra Kumar Verma** (40 supra) the Supreme Court held thus:-

"…….plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis, the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workman, if the relief is denied than to the employer, if the relief is granted……."

It is true that the Labour Court has the power, for just and valid reasons, to award compensation in lieu of reinstatement. The question of granting such a relief of compensation in lieu of reinstatement would only arise where the petitioner has pleaded, and let in evidence in support thereof, regarding circumstances, which necessitates the Labour Court granting compensation in lieu of reinstatement. It is not open to the petitioner management to raise these grounds for the first time before this Court. In the absence of adjudication by the Labour Court in this regard, this question does not call for any further examination by this Court, in certiorari proceedings, under Article 226 of the Constitution of India.

TRANSFER OF UNDERTAKING: IMPLEADING THE TRANSFEREE:

During the pendency of the writ petition, before this Court, the unit, in which the workman was hitherto employed, was transferred. The workman has sought to implead the transferee. Several contentions are raised, and several judgments cited, both for and against impleading the transferee. This question need not, however, be examined by this Court in view of the fact that the labour Court is now required to examine the consequences, of failure to furnish the enquiry report, on the validity of the domestic enquiry. This question is left open for adjudication in appropriate

proceedings.

IMPOSITION OF PUNISHMENT: SCOPE OF INTERFERENCE UNDER SECTION 11-A

Now W.P.No.16019 of 1996 filed by the petitioner-employer. The said writ petition is filed aggrieved by the award of the labour Court in directing reinstatement of the workman with continuity of service and attendant benefits.

Sri C.R. Sridharan, learned Counsel for the petitioner, would place reliance on **Mahindra and Mahindra Ltd Vs. N.B.Narawade** and submit that the abusive words used by the workman against his superiors and his act of threatening executives with dire consequences was itself sufficient to impose the punishment of dismissal from service and, in addition thereto, since the previous record of service of the workman revealed several incidents of unauthorized absence, sleeping on duty, leaving the work spot without permission etc., the punishment, imposed on the 2nd respondent, of dismissal from service, was justified and the Labour Court ought not to have shown misplaced sympathy, in exercise of its discretion under Section 11-A of the Industrial Disputes Act, to modify the punishment even in cases where such grave acts of misconduct have been held proved. Learned Counsel would refer to **Bharat Heavy Electricals Ltd Vs. M.Chandrasekhar Reddy**, New **Shorrock Mills Vs. Maheshbhai T. Rao, U.P. State Road Transport Corporation Vs. Mohanlal Gupta** and **Uttar Pradesh State Road Transport Corporation Vs. Subhash Chandra Sharma** in support of his submission that the scope of and the jurisdiction under Section 11-A of the Industrial Disputes Act is limited and that the discretion of the Labour Court is not unfettered.

Sri V.Narasimha Gowd, learned Counsel for the 2nd respondent, would however seek to justify the exercise of discretion by the labour Court, under Section 11-A of the Industrial Disputes Act, with regards the quantum of punishment and would, on the other hand, contend that the punishment of deferment of two increments and denial of back wages, in the facts and circumstances of the case, ought not to have been imposed. Learned Counsel would rely on **Rama Kant Misra Vs.State of U.P.**; **Ved Prakash Gupta Vs. M/s Delton Cable India (P) Ltd**; **Scooter India Ltd Vs. Labour Court**; **Palghat BPL Vs. BPL India Ltd** and **B.Balaraju Vs. Federal Sports**.

In **Mohanlal Gupta** (45 supra), the Supreme Court held that once the labour

Court comes to the conclusion that the charge stands proved, the question of award of any minor punishment would not normally arise.

I n **Subhash Chandra Sharma** (46 supra), the Supreme Court held that while Section 11-A, of the Industrial Disputes Act, vests the labour Court with the discretion to substitute the order of punishment, the discretion exercised by the labour Court cannot be capricious and arbitrary and for serious charges, of drunkenness, extortion, abuse and threatening to assault, which was held proved, it cannot be said that the punishment awarded, of termination from service, was in any way “shockingly disproportionate” to the nature of the charges proved against the workman and that the High Court, under Article 226 of the Constitution of India, ought to have corrected the erroneous order of the labour Court which, if allowed to stand, would result in miscarriage of justice.

I n **M.Chandrasekhar Reddy** (43 supra), the Supreme Court held that in the absence of a finding, on the basis of the evidence on record that the quantum of punishment is so harsh as to be vindictive or shockingly disproportionate, Labour Courts/Tribunals, in exercise of their jurisdiction under Section 11-A, could not interfere with the quantum of punishment.

In **N.B.Narawade** (42 supra) the Supreme Court, while examining the power of the Labour Court under Section 11-A of the Industrial Disputes Act held thus:

“It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. Orissa Cement Ltd and New Shorrock Mills “Punishment of dismissal for using of abusive language cannot be held to be disproportionate.” In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilized society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline

calling for lesser punishment in the absence of any extenuating factor referred to hereinabove."

I n **Ramakanth Misra** (47 supra), an employee was held guilty of disorderly behaviour and for having used threatening language against his superior officer. The Supreme Court held that the misconduct held proved was the use of indiscreet language and a threatening posture. Upon holding that the labour Court had the jurisdiction and the power to substitute the punishment in place of managerial wisdom once it was satisfied that the order of discharge or dismissal was not justified, the Supreme Court held that the management had not shown any blameworthy conduct during the period of 14 years service rendered by the employee prior to the date of misconduct and mere use of indiscreet language on one occasion, unconnected with any subsequent positive action and not preceded by any blameworthy conduct, could not permit imposition of the extreme penalty of dismissal.

In **Ved Prakash Gupta** (48 supra), the Supreme Court held that the charge leveled against the workman of abuse in filthy language, even if held proved, there was nothing on record to show that any previous adverse remark against the employee had been taken into consideration by the management for awarding the extreme penalty of dismissal from service and even if he had abused in filthy language, the punishment imposed was shockingly disproportionate. In **Scooter India Limited** (49 supra) the rude behaviour of the workman, which was the subject matter of the charge, was held to be proved. The Supreme Court held that the award of the labour Court, in directing reinstatement with 75% of back wages, cannot be said to be vitiated in any manner and that no interference was called for. In **Palghat B.P.L** (50 supra) certain employees had gone on strike and on sighting certain officers passing through, the workmen had assaulted them. The Supreme Court held that when a misconduct vis-à-vis the officers of the management was committed outside the factory, it could not amount to subversion of discipline, as prescribed under the certified Standing orders, and that the labour Court was justified in taking a lenient view in setting aside the order of dismissal.

It cannot be lost sight of that unlike in **Rama Kanth** (47 supra) and **Ved Prakash Gupta** (48 supra), the previous service record of the 2nd respondent workman, which was taken on record by the Labour Court, would indicate several

earlier instances of similar acts of misconduct.

Further as held in **N.B.Narawade** (42 supra) it is not open to the labour Court to interfere in matters of punishment on grounds of sympathy. It is only on the existence of certain factors like the punishment being so disproportionate to the gravity of misconduct so as to disturb the conscience of the Court or the existence of mitigating circumstances which require reduction in the quantum of punishment or the past conduct of the workman which may persuade the labour Court to reduce the punishment, could the labour Court, in exercise of its discretion under Section 11-A of the Industrial Disputes Act, interfere and substitute the punishment imposed by the Management, with another.

The reasoning given by the labour Court is, to say the least, strange. The Labour Court held that abusive words used against the employer amounted to scolding the mother of the addressee in a filthy language, that abusing in filthy language was due to anger, that persons lose temper at times and automatically foul language would emanate and that substituting the punishment of dismissal from service with one of denial of back wages and deferment of two increments, was justified. While the submissions of Sri C.R. Sridharan, learned counsel for the petitioner, regarding the reasoning put forth by the labour Court, cannot be said to be without merit, this question, does not call for any further examination, since the award of the labour Court has now been set aside.

The award in I.D.No. 282 of 1993 (old I.D.No.289 of 1990) is set aside, and the matter is remanded to the labour Court which shall give an opportunity to the 2nd respondent-workman to show cause as to how prejudice was caused to him on account of non-supply of the enquiry report and, on the basis of evidence adduced in this regard, adjudicate the validity of the domestic enquiry. Outcome of the decision, on the preliminary issue of the validity of the domestic enquiry, would form the basis for further action to be taken by the labour Court. In case the validity of the domestic enquiry is upheld the matter has to be examined under Section 11-A of the Industrial Disputes Act. In case, however, the domestic enquiry is held to be vitiated the employer may be permitted, if it has already made such a request, to adduce evidence and to permit evidence to be adduced by the workman contra, and thereafter, in exercise of the powers conferred under Section 11-A of the Industrial Disputes Act, re-appreciate the evidence and determine the quantum of punishment.

Needless to state that the labour Court shall adjudicate the dispute without being influenced by any observation made by this Court with regards the quantum of punishment imposed on the workman.

Since the dispute, in I.D.No. 282 of 1993 (old I.D.No.289 of 1990), is pending for 15 years, the matter requires expeditious hearing and adjudication. The labour Court shall, therefore, in accordance with what has been stated above, decide the Industrial Dispute and pass an award as expeditiously as possible, in any event, not later than six months from the date of receipt of a copy of this order.

Both the writ petitions are accordingly disposed of. No order as to costs.

Dt: .11.2005.

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RAMESH RANGANATHAN, J

MRKR/ASP